

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking of the)	RM-11338
National Association of Broadcasters)	
To Permit AM Radio Stations')	
Use of FM Translators)	

To: The Secretary
 Attention: The Commission

**COMMENTS OF
INTERMART BROADCASTING SOUTHWEST FLORIDA, INC.,
AND
INTERMART BROADCASTING COLLIER COUNTY, INC.**

InterMart Broadcasting Southwest Florida, Inc., and InterMart Broadcasting Collier County, Inc. (collectively "InterMart"), by their attorneys, and pursuant to Sections 1.4 and 1.405 of the Commission's Rules, respectfully comment on the "Petition for Rulemaking of the National Association of Broadcasters" filed July 14, 2006 ("NAB Petition"). The NAB Petition was listed on Public Notice Report No. 2782, released July 25, 2006, which afforded interested parties 30 days, or until August 24, 2006, within which to file statements opposing or supporting the NAB Petition.

InterMart Broadcasting Southwest Florida, Inc., holds a construction permit for WPBI(AM), North Palm Beach, Florida; and InterMart Broadcasting Collier County, Inc., holds a construction permit for WNPL(AM), Golden Gate, Florida. Both stations are "stand-alone" AM stations; i.e, they do not have FM companion stations.

InterMart supports, in principal, the ideas advanced in the NAB Petition that would permit AM stations to license and/or use FM translators to retransmit their AM

service as a fill-in service; however, any relaxation of the current FM translator rules should be narrowly tailored to afford relief only to AM stations that need the fill-in service to rectify a serious handicap. InterMart urges the Commission to limit the eligibility for FM translators to those AM stations that are either (1) daytime only AM stations, (2) Class C¹ AM stations, (3) AM stations that can convincingly demonstrate that they are subject to Cuban or other electrical interference that degrades their signals so as to make the signals unusable in the areas where the translators would provide “fill-in” service, or (4) stand-alone stations such as InterMart’s. Additionally, in the application process for a new FM translator, where an AM station meets the preceding criteria, there should be a dispositive preference awarded for stand-alone stations.

The NAB Petition stresses that “We have not requested access ‘beyond [our] normal satisfactory reception range.’” However, that does not limit the types of stations that could use FM translators to give themselves an FM signal within their current service contours.² Full time AM stations operating with high power have no need for FM translators, and they should not be eligible to apply for or to use them. AM stations suffer from other technical limitations, such as that imposed when using Hybrid Digital (“HD”) technology.³ Moreover, stand-alone AM stations struggle to make ends meet because they are not co-owned with FM stations that, generally, are more financially successful. Therefore, InterMart suggests that where a qualified licensee of an AM

¹ Formerly Class IV Stations operating on local channels.

² A 50,000 Watt clear channel AM station’s 2 mV/m contour (the signal level suggested by the NAB Petition) would permit the use of vastly more FM translators than the 2 mV/m contour of a 1,000 Watt day-time only station, in virtually every instance.

³ InterMart notes that, while FM stations can take advantage of HD technology on a full-time basis, AM stations are limited to HD broadcasting only during daylight hours.

station applies to construct a new FM translator, the Commission should award a dispositive preference⁴ to an applicant that can demonstrate it has no attributable interest in an AM station in the same radio market.⁵ This suggested limitation on the eligibility of AM stations will result in those stations having the most need actually obtaining the FM translators. In an auction for a vacant FM translator frequency, it would not be fair or reasonable to pit a 50,000 watt full-time clear channel AM station co-owned with multiple FM “sister stations” against a 1,000 watt daytime only stand-alone local station since the powerful station could easily outbid the little guy. Similarly, it would not be fair or reasonable for this hypothetical 50,000 watt full-time clear channel AM station to negotiate in the marketplace against a 1,000 watt daytime only station in the purchase of an FM translator that might be put up for sale. In short, without limitations on who is eligible, the most powerful AM stations will wind up with the FM translators. That will frustrate the goal that runs throughout the NAB Petition, i.e., that this is a proposal “to enhance the audio quality of AM service where necessary, and to enable AM stations to better compete in the ever-changing media marketplace.”

It would be a classic David and Goliath contest to match low-frequency-high power stations (that have no currently pressing need for an FM translator) against tiny small town daytime only stations that really could use an FM translator to help them

⁴ To resolve conflicts, a tie-breaking method would have to be adopted where more than one stand-alone AM station applied for a mutually-exclusive authorization.

⁵ InterMart suggests the market definition be the criteria set out in *2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, 18 FCC Rcd 13620 (2003).

compete. Unfortunately, in this contest, little David would lose every time. Unless the FCC limits the universe of eligible licensees as InterMart suggests, FM translators will bring no discernible benefit to AM broadcasting. Without eligibility limits, it is easy to predict the gold rush whereby some existing FM translator licensees will transfer their unwanted frequencies to the highest bidders—and those highest bidders will most probably not be small AM daytime only stations.

In light of the foregoing, InterMart urges the Commission, if it adopts the NAB Petition, to adopt it with the eligibility limitations InterMart suggests herein.

Respectfully submitted,

**INTERMART BROADCASTING
SOUTHWEST FLORIDA, INC.
INTERMART BROADCASTING
COLLIER COUNTY, INC.**

By: 

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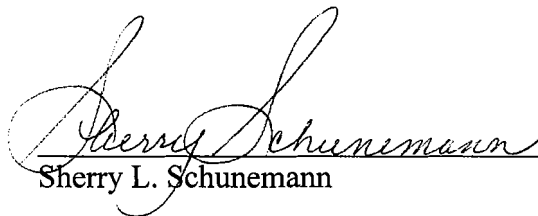
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August 24, 2006

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments of InterMart Broadcasting Southwest Florida, Inc., and InterMart Broadcasting Collier County, Inc." was mailed by First Class U.S. Mail, postage prepaid, this 24th day of August, 2006, to the following:

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